IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 457/2004

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 6th November, 2006

Heard Shri C.A. Joshi, learned counsel for the appellant.

2. The appellant who is the original plaintiff assails the Judgment and decree dated 11.3.2004 passed by the 3rd Ad hoc Additional District Judge, Akola in Regular Civil Appeal No. 249/2002 dismissing the appeal filed by the defendant against the Judgment and decree dated 2.11.2002 by the 3rd Joint Civil Judge, Junior Division, Akola in Regular Civil Suit No. 283/95.

3. The plaintiff as well as the defendant were the office bearers of the registered Society known as “Bara Jotirlinga Shichnakata Kavad Palakhi Pada Yatra Mandal, Akola”. It was the case of the plaintiff that he was put in possession of the suit property and that pursuant to the resolution passed by the Society the plaintiff was permitted to carry out the construction on the suit premises and during the pendency of the suit the defendant ill-legally

dismantled the structure situated on the suit premises and dispossessed him. The trial Court held that the plaintiff was not permitted by the Society to carry out the construction alleged by him. The trial Court also held that the case set up by the plaintiff that the defendant had ill-legally dismantled the structure and dispossessed him was not proved. The appellate court concurred with the findings given by the trial court and held that the plaintiff had not proved that he was in possession of the suit plot and also the case set up by the plaintiff that he was dispossessed by the defendant.

4. Mr. C. A. Joshi, the learned counsel for the appellant submitted that the findings recorded by both the courts below are contrary to the evidence on record and as such perverse. He submitted that the plaintiff was legally occupying the suit plot and, therefore, the trial court ought to have decreed the suit and the appellate court ought to have allowed the appeal filed by the plaintiff.

5. Having considered the submissions made by the learned counsel for the appellant and having perused the records, I find no merit in the submissions made by Mr. Joshi. The findings recorded by the trial Court that the plaintiff had no legal right to occupy the suit plot and that he was not dispossessed by the defendant during the pendency of the suit are the findings based upon proper

appreciation of the evidence on record. Therefore, the trial court was legally justified in dismissing the suit filed by the plaintiff and lower appellate court was also justified in dismissing the appeal filed by the plaintiff. The findings recorded by both the courts below cannot be said to be perverse warranting interference in second appeal which jurisdiction is absolutely limited. I find no perversity in the findings given by both the courts below. In any case, no substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

Judge

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